

No. 82-1742

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Office of the Clerk
SUPREME COURT OF PA.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)

VS)

DAN FORNEY)

NO. 406 of 1982

HEARING ON APPEAL OF TOWNSHIP
VIOLATION IN THE ABOVE ENTITLED CAUSE
BEFORE THE HONORABLE SAMUEL L. RODGER
J., on December 17, 1982, in Courtroom
#5.

APPEARANCES:

John B. McCreight, Esq., Solicitor of
Avella School District.

CHARGE: Violation of Tax Enabling
Act; Act 511.

ORDER

AND NOW, this 17th day of December,
1982, after considering all the testimony, evidence submitted,
and arguments of counsel and the defendant, we find the defendant
guilty as charged.

We will give the defendant ten days to file a

Motion for New Trial. If such a motion is filed within the ten days we will set Thursday, January 27, 1983 at 1:30 p.m., as the time in which we will pass upon your motions if you have filed them and also impose sentence, if any, on the basis of the Court finding that you are guilty as charged.

If the defendant decides to waive his right to file a Motion for New Trial between now and the ten days hence, he is to notify the Court of the same and we will set a date for sentencing.

/s/ Samuel L. Rodgers .J.

John D. McCright, Jr.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

83 JAN 27 PM 12 09

COMMONWEALTH OF PENNSYLVANIA)
CLERK OF COURTS) No. 406 of 1982
VS.)
WASHINGTON CO., PA.)
DAN FORNEY)

ORDER

AND NOW, this 27th day of January, 1983, after consideration of the argument of the solicitor for the School District, the sentence of the Court is that the defendant, DAN FORNEY, who has failed to appear after notice, pay the costs of prosecution forthwith. In lieu of the payment of costs, the defendant is sentenced to imprisonment in the Washington County Jail for a period of thirty (30) days. In the event that the defendant, DAN FORNEY, pays the costs of prosecution forthwith, and pays or makes arrangements to pay all sums due the Avella School District under Act 511 within the next ten (10) days and files proper returns of his income tax within said ten (10) days, he shall be placed on probation. The defendant having failed to appear and pay the costs as ordered by the Court a bench warrant shall issue for his arrest and upon his apprehension he shall be brought before this Court immediately.

/s/ SAMUEL L. RODGERS
Samuel L. Rodgers, J.

John B. McCreight Esq.

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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
'83 JAN 27 PM 3 CRIMINAL DIVISION

CLERK OF COURT
COMMONWEALTH OF PENNSYLVANIA

VS.

DAN FORNEY

)
)
) No. 406 of 1982
)
)

ORDER

AND NOW, this 27th day of January, 1983, upon motion of the defendant the order filed previously this morning is vacated. The Court having found the defendant guilty as charged, the sentence of this Court is that the defendant pay the costs of prosecution in this matter forthwith. If the defendant fails to pay these costs, the defendant is sentenced to imprisonment in the Washington County Jail for a period of thirty (30) days. If the defendant pays the costs of prosecution forthwith and pays or makes arrangements to pay all sums due the Avella School District under Act 511 within the next ten (10) days and the defendant files proper returns of his income tax within the next ten (10) days, the defendant will be placed on probation. The sheriff is directed to take the defendant into custody.

/s/ SAMUEL L. RODGERS
Samuel L. Rodgers, J.

COMMONWEALTH

Versus

Samuel Torrey

IN THE COURT OF COMMON PLEAS

Criminal Division

of the

County of Washington, Pa.

No. 406 of 198 2

Charge Failure to pay
taxes

SENTENCE

And now, to-wit: 1-27 1983, the defendant

being called for sentence on { his plea
the verdict } is sentenced by the Court to

He is ordered to pay costs of
prosecution for taxes
or be imprisoned
for 30 days

Attest:

S. / Judge Rodgers
Judge

Clerk of Courts

Dan Forney

100-10

100 FEB 2 AM 11 05

CLERK OF COURTS
WASHINGTON CO., PA.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
)
VS.) No. 406 of 1982
)
DAN FORNEY)

ORDER

AND NOW, this 1st day of February 1983, upon consideration of Commonwealth's motion to modify the sentence of January 27, 1983, relief is granted/denied and the order of sentence ~~is/is not~~ hereby modified to read: ~~the defendant Dan Forney is sentenced to pay a fine of \$ _____, and costs, and, in default of payment of said fine and costs to be imprisoned in the Washington County Jail for a period of thirty days; at _____ .m. on March _____, 1983, if the defendant has not paid said fine and costs in full, at that time he shall appear in courtroom no. _____ and show cause, if any there be, why he should not be held in default on said payment of fine and costs and be immediately committed to the Washington County Jail for a period of thirty days.~~

/s/ Samuel L. Rodgers
Samuel L. Rodgers, J.

2-23-83

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
vs.) No. 406 of 1982
DAN FORNEY)

ORDER

AND NOW, this 22nd day of February, 1983, it appearing that the original sentence in this matter consisted exclusively of costs, and imprisonment only in default of the payment of costs, it further appearing that the costs in this matter have been paid, no further sentence or penalty is contemplated and accordingly the defendants petition to modify sentence is hereby denied.

By Samuel J. Rouss (J)

1983 JAN 31 1 51

COURT OF COMMON PLEAS
OF WASHINGTON COUNTY

COMMONWEALTH OF PENNSYLVANIA)
) PLAINTIFF)
))
) VS.)
DAN FORNEY)
) DEFENDANT)

CRIMINAL
NO. 406 of 1982

NOTICE OF APPEAL

Notice is Hereby given that Dan Forney, defendant above named, Hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 27th day of January of 1983.


Dan Forney

RD#2 Avella, Pa.
15312

412 587 3134

Daniel Forney
R. D. #2
Avella, PA 15312

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)	
)	
VS.)	NO. 406 of 1982
)	
DANIEL FORNEY,)	
)	
Defendant.)	

BEFORE: Rodgers, J.

OPINION OF THE COURT

Rodgers, J.

February 28, 1983.

The tax collector for the Avella School District of Washington County, Pennsylvania charged the defendant, Daniel Forney, with violation of Act 511, "The Local Tax Enabling Act", 53 P.S. § 6901, et seq., in that the defendant "failed, refused and - or neglected to file final return for earned income or net profit and pay taxes due for the year 1980".

After hearing before a local magistrate, the defendant was found guilty and sentenced to pay a fine of Three Hundred Dollars (\$300.00) and costs.

The defendant, Forney pro se, appealed to this court, and after hearing de novo, the defendant was found guilty as charged and given ten days to file motions for a new trial and in arrest of judgment.

The defendant, Forney, who has represented himself throughout these proceedings, filed a motion for "judgment notwithstanding the verdict" or, in the alternative, a new trial. The court, after argument, dismissed defendant's post verdict motions and sentenced him to pay the costs of prosecution forthwith, and upon failure to do so to imprisonment for thirty days with the provision that if in prison he would be placed on probation if he paid the costs of prosecution and filed and paid the taxes due, if any, to the Avella School District for the year 1980. Defendant paid the costs of prosecution and was not imprisoned.

The defendant having appealed this court's sentence, this opinion is written in support of the court's order.

The defendant, apparently in good faith, is in rebellion against duly constituted authority on what he deems to be constitutional and religious grounds.

A somewhat similar case from the Avella area is Commonwealth v. David P. Venen, 288 Pa. Super 143, 431 A.2d 329 (1981), where the defendant pro se argued that on the basis of the Act of the General Assembly of March 12, 1842, 72 P.S. § 3301, and

the Act of Congress of June 5, 1933, 31 U.S.C.A. § 463, this nation is without legal tender and the defendant was unable legally to pay the fines assessed.

The defendant, Forney, also relies in part on 72 P.S. § 3301, although his argument is less coherent than the defendant in Venen. This argument of Forney has been rejected by the Superior Court in the Venen case.

The defendant also alleges in sweeping terms violations of his constitutional rights, including the first, fourth, fifth, seventh, eighth, ninth, thirteenth and fourteenth Amendments of the U. S. Constitution "as well as those guaranteed to him under the Declaration of Rights as found in the Constitution for the Commonwealth of Pennsylvania".

Of course, no right to jury trial exists in a summary proceeding for an ordinance violation where a sentence of six months or less may be imposed. Commonwealth v. Bacik, 61 Pa. Cmwlt. 552, 434 A.2d 860 (1981).

The defendant also claims the ordinance unconstitutional because it requires him to incriminate himself. This issue too has been resolved against the defendant. Philadelphia v. Cline, 158 Pa. Super 179 at 182, 183 (1945). The constitutionality of earned income tax ordinances imposed by municipalities have been passed upon favorably in Butcher v. Philadelphia, 333 Pa. 497 (1938) and Dole v. Philadelphia, 337 Pa. 375 (1940).

At the hearing before this court the defendant was not required nor did he testify. However, the Commonwealth presented evidence by Emanuel Paris that in the year 1980 he had made a substantial payment to Forney, who is a self-employed independent contractor, for services rendered, and the local tax collector testified that Forney had failed to file or pay any earned income tax for the year 1980.

The court found this testimony credible and adjudged the defendant guilty on the basis of this testimony.

Initially, this defendant also complained of the actions of the magistrate which this court finds to be without foundation, and in any event are moot.

Forney also claimed the prosecution was fatally flawed because it was initiated by a private complaint signed by the tax collector instead of a citation.

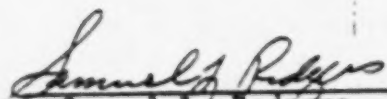
The affiant in this case, Ethel Alvarez, is the duly appointed tax collector. Such tax collector is not a police officer and has no power of arrest. See 53 P.S. § 6913 V.

Therefore, she was required to proceed by private complaint rather than by citation. In any event, the defendant was not prejudiced as required by Pa. R. Crim. P. 70.

This court imposed no fine because in this case the defendant is apparently acting in good faith, although the court believes him to be confused and misguided.

The court understands another prosecution against this defendant is now pending alleging additional violations.

If this defendant continues to defy valid earned income tax ordinances, more stringent sanctions will, of course, have to be imposed.



Samuel L. Rodgers, J.

COURT OF COMMON PLEAS WASHINGTON COUNTY

COMMONWEALTH OF PENNSYLVANIA)	
)	
Plaintiff)	
)	Criminal Docket # 40 of 1982
vs.)	
)	
DAN FORNEY)	
)	
Defendant.)	

AMENDED NOTICE OF APPEAL FOR TRANSFER TO COMMONWEALTH COURT

It now appears to this defendant, that since the Plaintiff has filed Notice of Appeal in the Commonwealth Court, that my Appeal with filing fee, should be transferred there also as per Title 42 Pa. C. S. § 762 (a) (4) (A)

Thank You


DAN FORNEY

CERTIFICATE OF SERVICE

The following Ammended Notice of Appeal for transfer to Commonwealth Court was delivered to the following parties in the manner designated below upon the IIth day of March 1983.

John W. McCreight, Soliciter for Plaintiff Mailed 1st class
on the IIth day of March, 1983

800 Washington Trust Building
Washington, Pa. 15301

Dan Forney
Dan Forney